

Madras High Court

**Public Information Officer
VS
State Chief Information ...**

on 7 January, 2010

DATED : 07.01.2010

CORAM

THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.NO.20372 of 2009

and

M.P.NO.1 OF 2009

**Public Information Officer/
Deputy Commissioner of
Archives and Historical Research,
Tamil Nadu Archives,
Egmore,
Chennai-8. .. Petitioner**

Vs.

**1.State Chief Information Commissioner,
Tamil Nadu Information Commission,**

**Kamadhenu Super Market 1st Floor,
Teynampet,
Chennai-18.**

**2.State Information Commissioner,
Tamil Nadu Information Commission,
Kamadhenu Super Market 1st Floor,
Teynempet,
Chennai-18.**

**3.S.Thanuskodi
Managing Director,
Kandamanur Zameen Wealth Developer,
Madurai-625 014. .. Respondents**

This writ petition has been preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records pertaining to the order dated 4.5.2009 passed by the first respondent in Case No.2242/Enquiry/2009 and to quash the same.

For Petitioner : Mr.R.Neelakandan, GA

For Respondents : Mr.G.Rajagopal, SC for

M/s.G.R.Associates for R1

ORDER

Heard both sides.

2.The petitioner is the Deputy Commissioner of Archives and Historical Research of Tamil Nadu Archives, Chennai. They have filed the writ petition seeking to challenge the order, dated 29.4.2009 issued by the first respondent.

3.It is seen that the third respondent claiming to be a Managing Partner of a Real Estate firm, asking for certain information from the office of the petitioner, relating to old maps, settlement records and title deeds and also the details of court of wards. On receipt of the requisition from the third respondent, the petitioner informed the Central Land Survey Office, Chepauk that they should send two staff for one month period to take over the records from the Archives. They have also stated that they should provide the District, Taluk and village numbers and a complete records, for which records are required. A copy of the letter, dated 31.10.2008 was also marked to the third respondent. Further, a letter was also sent to the Land Reforms Department, Chepauk with reference to providing settlement records, title deeds and court of wards index. They have sought for permission from the department to provide such information.

4.The Commission, after notice to the petitioner Archives and also to the Central Survey Office, held that Archives cannot refuse to furnish any information unless it is covered by Sections 8 and 9 of the Right to Information Act.

5.In the present case, the claim of the petitioner Archives was that they are only the custodian of records in terms of the Madras Secretariat Office Manual as well as Archival Policy Resolution adopted by the State Government and approved by G.O.Ms.No.1, Education (W1) Department, dated 2.1.1990 and hence they are not bound to provide any information to any one. The policy resolution adopted by the State in paragraph No.xvii reads as follows: "(xvii)All non-confidential public records, over 30 years old transferred to the State Archives will be open to bonafide Research Scholars, subject to such exceptions and restrictions as may be found necessary by the Departments concerned in consultation with the Commissioner of Tamil Nadu Archives and Historical Research."

6.However, as rightly overruled by the first respondent, Section 22 of the RTI Act has an overriding effect. Section 22 reads as follows: "Act to have overriding effect.-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

7.Therefore, the petitioner cannot contend that the documents cannot be furnished without the concerned department's consent. To obviate this difficulty, the Commission in the impugned order had stated that in order to ascertain the concerned department's objection, the petitioner Archives must notify to those department. Such department in case of any objection should submit their objection within 10 days in the normal circumstances. However, in case of documents which

are more than 20 years old, since Section 8(3) itself de-classifies those documents, there is no difficulty for the Archives to provide those documents even without consulting the concerned department.

8. Section 8(3) reads as follows:

“8(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section: Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.”

9. It is this impugned order, the petitioner has chosen to challenge in the writ petition. The writ petition was admitted on 08.10.2009 and an interim stay was granted.

10. The contention raised by the petitioner was that the petitioner archives is not the owner of the documents. The archives is a very small department and cannot handle if such requests are made to them as they are maintaining approximately 65 lakhs records. They also placed reliance upon Section 6(3) of the RTI Act, wherein a transfer of request of any applicant to the concerned department can be made. It was also stated that they cannot act as a public information officer for over 45 departments of the Government. Only the parent department will know the details of the documents sought for.

11. Since the Commission under Section 8 is entitled to overrule any objection if larger public interest warrants disclosure of such information, the question of taking umbrage under the exemption clause will not arise. Any objection will have to be raised before the Commission by the Department of Archives or on notice by the archives the concerned department. Even then, the Commission can decide disclosure of such information was required in public interest. The Commission has clearly stated that the so-called owner of the document can only be like a third party and subject to provisions of Section 11 of the RTI Act and that they can forward the objections made by the concerned department.

12. In so far as documents which are more than 20 years old, Section 8(3) itself declassifies those documents. The petitioner Tamil Nadu Archives is a “public authority” within a meaning of Section 2(h) of the RTI Act. Since they are empowered to retain records, subject to provisions of Sections 8 and 11, they

cannot object to the disclosure of such information. Further, the Commission has safeguarded the interests of the concerned departments as they will be put on notice by the Archives about their objection in terms of law.

13.The other objections that they are maintaining a large number of documents in respect of 45 departments and they are short of human resources cannot be raised to whittle down the citizens' right to seek information. It is for them to write to the Government to provide for additional staff depending upon the volume of requests that may be forthcoming pursuant to the RTI Act. It is purely an internal matter between the petitioner archives and the State Government. The right to information having been guaranteed by the law of Parliament, the administrative difficulties in providing information cannot be raised. Such pleas will defeat the very right of citizens to have access to information. Hence the objections raised by the petitioner cannot be countenanced by this court. The writ petition lacks in merit.

14.In the result, the writ petition will stand dismissed. No costs. Consequently, connected MP also stands dismissed.

vvk

To

1.State Chief Information Commissioner,

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Kamadhenu Super Market 1st Floor,

Teynampet,

Chennai-18.

2.State Information Commissioner,

Tamil Nadu Information Commission,

Kamadhenu Super Market 1st Floor,

Teynempet,

Chennai 18